

## **CHAPTER 10 PROCEDURES FOR ADMINSTRATIVE HEARINGS**

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## **1000 GENERAL PROVISIONS**

- 1000.1 The rules of procedure set forth in this chapter shall govern the following:
  - (a) The form, content, and filing of pleadings in contested cases;
  - (b) The procedure for submission, consideration, and disposition of petitions for the adoption, amendment, or repeal of rules and regulations the adoption of which has been delegated to the Director;
  - (c) The petitions for declaratory orders and self-insurance certificates; and
  - (d) The final determination of the policy of the Department in any case in which the rights, duties or privileges of any person are in issue.
- 1000.2 In any case where the statute involved provides a procedure inconsistent with this chapter, the statute shall govern to the extent of such inconsistency.
- 1000.3 If in any case the forms set out in this chapter are found to be inappropriate, parties may devise forms substantially similar to those herein prescribed to meet such situations.
- 1000.4 The hearings provided in the statutes, rules, and regulations administered by the Department, as well as petitions requesting the promulgation, amendment, or repeal of any rule or regulation coming within the purview of authority delegated to the Director, or for a declaratory order pursuant to the Administrative Procedure Act, shall be heard or considered by the Director or by a Hearing Examiner designated by him or her.

## **1001 COMPUTATION OF TIME**

- 1001.1 When, by notice given under this chapter, or by order or decision of an Examiner, an act is required or allowed to be done at or within a specified time, the Examiner for cause shown may, at any time in his or her discretion, do either of the following:
  - (a) With or without motion or notice, order the period enlarged, if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or
  - (b) Upon motion made after expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect

and only then in extraordinary cases where the denial of an enlargement of time would operate to deny a person adversely affected thereby any opportunity to notice and hearing.

- 1001.2 In computing any period of time prescribed or allowed by this chapter, by notice, order, rule, or regulation of the Department, or by statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included.
- 1001.3 The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- 1001.4 Whenever a party has the right or is required to take action within the period prescribed by this chapter, by a notice given thereunder, or by an order or regulation, the examiner may, before the expiration of the prescribed period, with or without notice, extend the period; or, upon motion, permit the act to be done after the expiration of the specified period, where the failure to act is clearly shown to have been the result of excusable neglect.

## **1002 ADOPTION OF ADMINISTRATIVE RULES AND REGULATIONS**

- 1002.1 Whenever the Director proposes to adopt, amend, or repeal a rule or regulation, the adoption and promulgation of which has been delegated to the Director, any interested party or parties may submit data or views on the action proposed in the form of a written petition.
- 1002.2 Any interested party or parties may petition in writing to the Director for the adoption, repeal, or amendment of any rule, the authority for which has been delegated to the Director.
- 1002.3 Upon receipt, the Director may refer a petition to the Chief Examiner with a request for a written report on the advisability of any action to be taken upon the petition.
- 1002.4 The Chief Examiner shall submit his or her report as soon thereafter as is possible with recommendations.
- 1002.5 If the Director determines that the petition discloses sufficient reasons in support of the prayers therein to justify the institution of public rulemaking, an appropriate notice will be issued to all petitioners that a public hearing will be held on the matter.

- 1002.6 If the Director determines that the petition does not show sufficient grounds to justify rulemaking procedures, petitioner will be so notified together with the grounds for denial.
- 1002.7 The Director may order a hearing to be held prior to the adoption, amendment or repeal of a rule in the manner prescribed in this chapter, insofar as said procedures are applicable.
- 1002.8 The Examiner to whom the proceeding has been assigned shall submit to the Director a summary of the arguments of both sides and an initial decision which shall contain a statement of findings of fact and conclusions based thereon as well as the reasons thereof, and a proposed draft of any recommended rule or amendment.
- 1002.9 The Director shall file any rule, amendment, or repeal thereof approved by him or her with the Office of Documents and Administrative Issuances.
- 1002.10 If any rule is adopted pursuant to proceedings initiated by petition of any interested party, a copy of the rule shall be delivered to the party.

### **1003 DECLARATORY ORDERS**

- 1003.1 Any person in interest may petition the Director for a declaratory order with respect to the applicability of any rule, order, or statute enforced or administered by the Director, to remove any uncertainty or ambiguity in the application of the rule, order, or statute, or to terminate a controversy in any case in which a hearing is not required by law for its disposition.
- 1003.2 Two (2) or more persons similarly situated may join in a single petition and additional parties may intervene by petition.
- 1003.3 Upon receipt of a petition, the Director may refer the petition to the Chief Examiner with a request for a written report on the advisability of any action to be taken.
- 1003.4 The Chief Examiner shall submit his or her report as soon thereafter as possible with recommendations and a proposed order, if recommended.
- 1003.5 If the Director determines that the petition discloses sufficient reasons in support of the prayers therein to justify a declaratory order, the Director shall submit the proposed declaratory order, or a modification of the declaratory order, accompanied by the findings of fact upon which the recommended order is based, to the Corporation Counsel for approval.
- 1003.6 If the Director finds that the petition involves a hypothetical or moot question; or that petitioner has no interest within the meaning of the Administrative

Procedure Act in that the legal rights, duties, or privileges of such petitioner will not be substantially affected by the granting or denial of the order prayed for; or that petitioner does not intend to pursue a stated course of action in the event of a favorable order by the Director; or on other grounds deemed sufficient by the Director, such petition will be dismissed with notice to petitioner stating the grounds for the dismissal.

- 1003.7 The Director may order a hearing to be held prior to or after submission of the report by the Chief Examiner described in § 1003.4.
- 1003.8 If recommended in a case pending before the Corporation Counsel, a hearing shall be held to determine any material facts not in the record but deemed necessary by the Corporation Counsel for a decision.
- 1003.9 Hearings shall be held in the manner prescribed in this chapter insofar as such procedures are applicable.
- 1003.10 The Examiner to whom the proceeding has been assigned shall report findings of fact and, where applicable, conclusions of law in his or her report.
- 1003.11 The Director shall file with the Mayor any declaratory order approved by the Corporation Counsel, and a copy of the order shall be delivered to any petitioner whose name appears in the record.

#### **1004 HEARINGS AND OTHER ADMINISTRATIVE REVIEW**

- 1004.1 A person has a right to a hearing whenever he or she has been aggrieved or adversely affected by any act or refusal to act, or the issuance of any order or decision by the Department which is subject to review by any applicable statute, or which constitutes a “contested case” as this term is defined in the Administrative Procedure Act.
- 1004.2 The right to a hearing shall not extend to:
  - (a) Any act or decision that is based solely upon on the results of any test, examination or inspection given or made by the Department;
  - (b) The suspension or revocation of a driver’s license based upon point totals;
  - (c) The suspension of a reciprocity sticker registration certificate;
  - (d) The assessment of a fine for failure to maintain required motor vehicle insurance; or

- (e) Any other instance where the decision to hold a hearing is left to the discretion of the Director or hearing examiner.

- 1004.3 Hearings may be afforded persons not otherwise qualified under the provisions of § 1004.2 in the discretion of the Director, or as specifically provided in this chapter.
- 1004.4 Any person entitled to a hearing may demand the hearing by written demand which shall comply with the requirements of this chapter.
- 1004.5 Every party shall have the right to present his or her case or defense by oral or documentary evidence, to submit evidence in rebuttal and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- 1004.6 When two (2) or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each hearing, the examiner may fix the same time and place for each hearing and conduct the hearings jointly.
- 1004.7 When joint hearings are held, a single record of the proceedings shall be made, the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

## **1005 HEARING ON REVOCATION OR SUSPENSION OF LICENSE**

- 1005.1 Any person whose license is revoked or suspended may, unless otherwise provided by law, demand a hearing which shall be granted, except as provided in § 1005.4.
- 1005.2 The hearing demand shall be made in writing to the Director within five (5) days after the issuance of a revocation or suspension order.
- 1005.3 There shall be no extensions of time as prescribed in § 1005.2, except as provided in § 1001.
- 1005.4 A person is not entitled to a hearing when the action taken by the Director is made mandatory by law or when the person has previously been afforded an opportunity with appropriate notice for a hearing.
- 1005.5 Upon receipt of the demand for a hearing, the Director may refer the same to the Chief Examiner for hearing and decision.
- 1005.6 The Director may, at the time the demand is filed, take up the regular form of license of the person against whom an order of revocation or suspension has

been issued and, in such case, shall issue a temporary license for the period he or she deems necessary in order to afford that person a hearing.

- 1005.7 The temporary license shall operate as a stay of the order of suspension or revocation until the date of the hearing and shall contain a notice to the holder thereof of the foregoing limitation of the stay of the order.
- 1005.8 Temporary licenses issued pursuant to this section shall not state the fact of the proposed suspension or revocation.
- 1005.9 The Director may, for good cause shown, issue additional temporary licenses as he or she may deem necessary in order to carry out the intent of this section.
- 1005.10 If any person fails to appear at a hearing scheduled by the Director without good cause shown, the stay of the order of suspension or revocation shall become void and the order shall become effective immediately upon the expiration of such stay with no further action required of the Director.
- 1005.11 Temporary licenses issued under this section shall be effective or renewed until the hearing examiner's decision is issued, the person fails to appear as required by § 1005.10, or his or her permit is suspended or revoked on other grounds pursuant to this chapter, whichever occurs first.

**1006 HEARING ON REVOCATION OR SUSPENSION OF REGISTRATION, RECIPROCITY STICKER OR LICENSE PURSUANT TO THE CLEAN HANDS ACT**

- 1006.1 Any person whose license, registration, or reciprocity sticker has been ordered revoked or suspended by the Director for knowingly falsifying a certification in violation of the Clean Hand Act (D.C. Code § 47-2861 et seq.) may request a hearing.
- 1006.2 The request for a hearing shall be made to the Director, in writing, within ten (10) days after the date of the revocation order.
- 1006.3 A request for a hearing shall stay the revocation order until the date of the hearing.
- 1006.4 If any person fails to appear at a hearing scheduled by the Director, the revocation order shall become effective immediately.
- 1006.5 Appeals from any final decision of a Hearing Examiner or Director pursuant to this section shall be taken to the Traffic Adjudication Appeals Board.

## **1007 HEARING EXAMINERS**

- 1007.1 Upon the filing of a demand for hearing, an examiner shall be assigned to the case. Thereafter, all motions and procedural requests shall be addressed to the examiner assigned to the case.
- 1007.2 The Director and examiners shall have the following powers, in addition to any other powers specified in this chapter:
- (a) To give notice concerning reviews and hearings;
  - (b) To administer oaths and affirmations;
  - (c) To examine witnesses and to take testimony;
  - (d) To issue subpoenas, to take depositions, or cause depositions or interrogatories to be taken;
  - (e) To rule upon offers of proof and to receive relevant evidence;
  - (f) To regulate the course and conduct of hearings and reviews;
  - (g) To hold conferences, before or during a hearing, for the settlement or simplification of issues;
  - (h) To rule on motions and to dispose of procedural requests or similar matters;
  - (i) To make initial or final decisions as provided herein or by law; and
  - (j) To take any other action authorized by this chapter, the Administrative Procedure Act, or by any other applicable statute, rule, or regulation.
- 1007.3 The authority of the examiner in each case shall terminate upon the occurrence of any of the following:
- (a) Expiration of the period within which requests for administrative or judicial review may be filed;
  - (b) When the examiner withdraws from the case upon considering himself or herself disqualified, or for any other reason;
  - (c) Reassignment of the proceedings by the chief examiner to another examiner; and



- (d) Service of a final decision, or of an initial decision, whichever is applicable.

- 1007.4 No examiner shall conduct a hearing in a proceeding in which he or she is prejudiced or partial with respect to any party, or where that examiner has any interest in the matter pending for decision before him or her.
- 1007.5 In cases to be determined upon an evidentiary record after notice and hearing, a party desiring that an examiner disqualify himself or herself from participating in the proceeding shall file a motion as provided in § 1018.
- 1007.6 The Examiner to whom a case is assigned shall give the parties reasonable notice including the date and place of a hearing and the nature of the hearing.
- 1007.7 In no case shall notice be given less than ten (10) days prior to the hearing unless by consent of all parties to the hearing.
- 1007.8 In the case of a hearing for the administrative adjudication of a traffic infraction, the date and place of the hearing may be specified in the notice of infraction.

#### **1008 DISMISSAL OF HEARINGS**

- 1008.1 With the approval of the examiner at any time prior to the mailing of notice of the decision, a demand for a hearing may be withdrawn or dismissed upon motion of the party or parties filing the demand for the hearing.
- 1008.2 A party may request a dismissal by filing a written notice with the examiner or orally stating the request at the hearing.
- 1008.3 With the approval of the examiner, a demand for hearing may be dismissed upon its abandonment by the party or parties who filed it.
- 1008.4 A party shall be deemed to have abandoned a demand for a hearing if neither the party nor his or her attorney appears at the time and place fixed for the hearing and, prior to the time for hearing, the party has not shown good cause why neither he or she nor his or her attorney can appear.
- 1008.5 The examiner may, on his or her own motion, dismiss a hearing demand, either entirely or as to any stated issue, under any of the following circumstances:
  - (a) Where the doctrine of res judicata is applicable because of a final decision either by the Department or by judicial affirmance. Where the grounds asserted for a proposed revocation or suspension have been the subject of a trial and judgment by the Superior Court of the District of Columbia, and that judgment is in favor of the party demanding the

hearing, the demand shall be dismissed, the proposal denied, and the license restored, without fee, unless there exists some other encumbrance on the license;

- (b) Where the party demanding a hearing is not a proper party or does not otherwise have a right to a hearing. This would include, but is not limited to, cases in which an individual has been convicted of an offense following which revocation of the license is mandatory under an applicable statute, or those in which an individual has been convicted of an offense following which suspension of license or registration is mandatory under an applicable statute unless proof of financial responsibility for the future is furnished to the Department;
- (c) Where the party has failed to file a timely hearing demand pursuant to the provisions of this chapter, and the time for filing the demand has not been extended under the provisions of this chapter;
- (d) Where a party who filed the hearing demand dies and there is no information before the Examiner showing that an individual who is not a party may be prejudiced by the determination which is the subject of the demand for hearing; or
- (e) Where the Examiner, in his or her opinion, finds that a petition filed in any proceeding does not raise a question of fact or the claim or prayer is frivolous.

## **1009 NOTICE AND EFFECT OF DISMISSAL**

- 1009.1 Notice of the action of dismissal by the Examiner shall be given to the parties or mailed to them at their last known addresses.
- 1009.2 The dismissal of a demand for hearing shall be final and binding unless vacated.
- 1009.3 The action of dismissal shall be in the form of an order by the examiner which shall contain a statement of facts and the reason for the dismissal. No order shall be necessary where all the parties have filed an application for dismissal in writing.
- 1009.4 An examiner may, on motion of a party and for good cause shown, vacate any dismissal of a demand for a hearing at any time within thirty (30) days from the date of mailing notice of dismissal of a demand for hearing.
- 1009.5 An order containing a statement of facts and the reasons for denial of such motion shall be given to the moving parties or mailed to them at their last known address.

## **1010 DOCUMENTS FILED IN PROCEEDINGS**

- 1010.1 Documents required or permitted by any provision of this chapter shall be filed with the Director.
- 1010.2 Documents may be filed by personal delivery or by mail.
- 1010.3 Unless otherwise specified, documents shall be considered to be filed on the date on which they are actually received by the Director.
- 1010.4 All documents filed with or presented to the Hearing Division may be retained in the files of the Division; Provided, that the Division may permit the withdrawal of original documents upon the submission of properly authenticated copies to replace the documents.
- 1010.5 Any party who submits data or evidence in a proceeding governed by this chapter in response to a subpoena or by request or by permission of the Department may, on payment of lawfully prescribed costs, procure a copy of any document submitted by him or her a copy of any transcript made of his or her testimony.

## **1011 FORMAT OF DOCUMENTS FILED IN PROCEEDINGS**

- 1011.1 All typewritten documents shall be on strong, durable paper not larger than eight and one-half by fourteen inches (8 in. x 14 in.), except that other documents may be larger if folded to the size of the document to which they are physically attached.
- 1011.2 Text shall be double-spaced, except for footnotes and long quotations which may be single-spaced.
- 1011.3 Type not smaller than elite shall be used.
- 1011.4 The left margin shall be at least one and one-half inches (1 ½ in.), and all other margins shall be at least one inch (1 in.).
- 1011.5 If the document is bound, it shall be bound on the left side.
- 1011.6 Papers may be reproduced by any duplicating process, provided all copies are clear and legible.
- 1011.7 Appropriate notes or other indications shall be used so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

- 1011.8 Unless otherwise specified, an executed original and one (1) copy of each document required or permitted to be filed under this section shall be filed with the Director.
- 1011.9 Copies need not be signed, but the name of the person signing the document, as distinguished from the firm or organization he or she represents, shall also be typed or printed on all copies below the space provided for signature.

## **1012 CONTENTS OF DOCUMENTS FILED IN PROCEEDINGS**

- 1012.1 If there is no rule, regulation, or order of the Department which prescribes the content of a formal application, petition, complaint, motion, or other authorized or required document, the document shall contain a proper identification of the parties concerned, the Hearing Division Docket Number, if assigned, and a concise but complete statement of the facts relied upon and the relief sought.
- 1012.2 Every document shall be signed by the party filing it, or by a duly authorized officer of a business organization or the attorney of record of that party.
- 1012.3 The signature of the person signing the document constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information, and belief every statement contained in the document is true, and no such statements are misleading; and that the document is not interposed for delay.
- 1012.4 The initial document filed by any person shall state on the first page the name and post office address of the person or persons who may be served with any documents filed in the proceeding.
- 1012.5 A document which is filed in violation of this section or in violation of any other requirements imposed by this chapter will not be accepted for filing by the Department and will not be physically incorporated in the docket of the proceeding. The sender of the document and all persons who have been served therewith will be notified informally of the action of the Department.

## **1013 SERVICE OF DOCUMENTS**

- 1013.1 Formal notices, final orders, and similar documents issued by the Hearing Division will be served by the Division on all parties to the proceedings.
- 1013.2 Any document filed by any party with the Hearing Division or an Examiner shall be served upon all parties to the proceedings in which it is filed.

- 1013.3 Service may be made by regular mail, by registered or certified mail, or by personal delivery.
- 1013.4 Service upon a party may be upon an individual, or upon a partnership member, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by a party to receive service of documents in a particular proceeding as provided by District of Columbia law other than the District of Columbia Administrative Procedure Act.
- 1013.5 Service by regular or registered or certified mail shall be made at the address of the party designated under § 1012.4 to receive service of documents. If no such person is designated, service may be made at the usual residence or principal place of business of the party, or, if unknown, at the last address furnished by the party to the Department.
- 1013.6 Proof of service shall accompany all documents when they are tendered for filing. Proof of service of any document shall consist of one of the following:
- (a) A certificate of mailing executed by the person mailing the document; or
  - (b) An acknowledgement of service signed by a party receiving service personally or a certificate of the person making personal service.
- 1013.7 Acknowledgement of service may be made by any person at the address shown on the document who is sixteen (16) years of age or over.
- 1013.8 Whenever proof of service is made, the date of mailing shall be the date of service, except that a final order of revocation or suspension shall be considered served as provided specifically in other provisions of this title, or as provided in this section.

#### **1014 AMENDMENT AND DISMISSAL OF DOCUMENTS**

- 1014.1 If any document initiating or filed in a proceeding is not in substantial conformity with the rules applicable to its contents, or is otherwise insufficient, the Hearing Division may, on its own initiative, or on motion of any party, strike or dismiss the document, or require its amendment.
- 1014.2 If properly amended, a document shall be made effective as of the date of original filing, but the time prescribed for the filing of any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

- 1014.3 At any time more than ten (10) days prior to the date of hearing, a party may amend its pleading by filing the amended pleading with the Hearing Division and by serving copies on the other parties. After that time, amendment shall be allowed at the discretion of the examiner assigned to the case.
- 1014.4 Where amendment to an answerable pleading has been allowed, the examiner shall allow the adverse party a reasonable time to answer.
- 1014.5 A party may withdraw a pleading only upon approval of the examiner.

## **1015 RESPONSIVE DOCUMENTS**

- 1015.1 Answers to applications, complaints, petitions, motions, or other documents or orders instituting proceedings may be filed by any party to the proceedings or by any person who has a petition for intervention pending.
- 1015.2 Except as otherwise provided, answers or any further responsive document shall be filed within seven (7) days after service of the document to which the responsive filing is directed.

## **1016 STYLE OF PLEADINGS AND PETITIONS**

- 1016.1 All pleadings, notices, orders and other papers filed under the provisions of this chapter shall be captioned "Before the Department of Motor Vehicles of the District of Columbia."
- 1016.2 A document shall contain the Department Docket Number, if assigned.
- 1016.3 Each petition filed under this chapter shall be styled in the manner of pleadings as provided in this section.
- 1016.4 Each document shall contain a title appropriate to the proceedings which describe generally the type of document it purports to be, such as one of the following;
- (a) "In the Matter of the Revocation (or Suspension) of (license, registration) of (person whose license or registration is revoked or suspended);"
  - (b) "In the Matter of the Adoption of a Rule Relating to \_\_\_\_;"
  - (c) "In the Matter of an Amendment (or Repeal) of Rule No. \_\_\_\_ of the rules relating to \_\_\_\_;"
  - (d) "In the Matter of Applicability of Rule (or Order) No. \_\_\_\_ of the rules relating to \_\_\_\_;"
  - (e) "In the Matter of an Application for a Certificate of Self-Insurance under D.C. Code § 40-494;" or

(f) "Motion to \_\_\_\_."

1016.5 Each petition shall meet the general requirements of documents under § § 1010, 1011, and 1012.

1016.6 Upon filing, each petition shall be given a docket number and shall become a matter of public record.

1016.7 Each petition shall contain the following:

- (a) A concise statement of the facts which tends to show the petitioner's interest;
- (b) Supporting data, facts, or evidence upon which petitioner relies as justification for the action prayed for; and
- (c) A prayer for the order to which the petitioner believes he or she may be entitled.

## **1017 MOTIONS**

1017.1 An application to the Director for an order or ruling not otherwise specifically provided for in this chapter shall be by motion.

1017.2 All motions shall be made at an appropriate time, depending upon the nature of the motion and the relief requested.

1017.3 Unless made during a hearing, motions shall be made in writing in conformity with § 1016, shall state with particularity the grounds for the motion and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon.

1017.4 Motions made during hearings, answers thereto, and rulings thereon, may be made orally on the record unless the examiner directs otherwise.

1017.5 Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except as follows:

- (a) When incorporation of a motion in another document is specifically authorized by a rule of the Department; or
- (b) When a document is filed which requests alternative forms of relief and one of these alternative requests is properly to be made by motion.

1017.6 In the instances described in § 1017.5, the document filed shall be appropriately entitled and identified to indicate that it incorporates a motion. Otherwise the motion will be disregarded.

- 1017.7 Within seven (7) days after a motion is served, or such other period as the examiner may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon.
- 1017.8 No oral argument shall be heard on motions unless directed by the examiner.
- 1017.9 Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.
- 1017.10 All motions shall be disposed of promptly by the examiner to whom the proceeding has been assigned unless otherwise directed by the Chief Hearing Examiner.
- 1017.11 The filing or pendency of a motion shall not automatically alter or extend the time fixed by this chapter or any extension granted thereunder to take action.
- 1017.12 Except as otherwise specified in this chapter, any motion allowed under the rules of practice of the courts of the District of Columbia shall be entertained whenever applicable.
- 1017.13 All written motions shall be filed not later than ten (10) days prior to the date set for review or hearing unless the examiner shall find that subsequent circumstances have arisen which justify granting of leave to file the motions.
- 1017.14 All motions pending at the time of review or hearing shall be disposed of at that time.

## **1018 MOTIONS FOR LEAVE TO FILE CERTAIN DOCUMENTS**

- 1018.1 The Hearing Division will accept otherwise unauthorized documents for filing only if leave has been previously obtained from the Division on written motion and for good cause shown.
- 1018.2 Motions for leave to file shall be filed within ten (10) days after service of any document or order or ruling to which the proposed filing is addressed and shall be served on all parties to the proceeding. Answers to these motions may not be filed.
- 1018.3 Motions for leave to file shall contain a concise statement of the matters relied upon as good cause and there shall be attached thereto the pleading or other document for which leave is sought.
- 1018.4 The ruling of the examiner on such motions shall be final.

## **1019 MOTION TO DISQUALIFY EXAMINER**



- 1019.1 Any party desiring that an examiner disqualify himself or herself from participating in a decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification within the period prescribed in § 1017.
- 1019.2 Failure to file a timely motion shall be deemed a waiver of disqualification.
- 1019.3 Application for leave to file an untimely motion seeking disqualification of an examiner shall be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.
- 1019.4 The Chief Examiner shall rule on all such motions and his or her ruling shall be final.

## **1020 SUBPOENAS**

- 1020.1 Subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence for the purpose of hearings or reviews may be issued by the examiner to whom the case is assigned, or, in the event that an examiner has not been assigned to a proceeding or the examiner is not available, by the Chief Examiner or the Director, upon application by a party to the proceeding.
- 1020.2 Applications shall be in writing and in the form of a motion.
- 1020.3 If application is made two (2) or more days prior to the hearing, the motion shall be acted upon prior to the hearing, unless all parties agree that it will be acted upon at the hearing.
- 1020.4 If made during a hearing, the application (motion) may be made orally on the record with the consent of the examiner.
- 1020.5 Motions for issuance of subpoenas shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by a description of any documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.
- 1020.6 Where it appears at a hearing that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the examiner or Chief Examiner may issue on his or her own motion a subpoena requiring such witness to attend and testify or requiring the production of such documentary evidence.
- 1020.7 Hearings and reviews of the Department shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902

(D.C. Code § 1-237). The provisions of D.C. Code § § 4-601 through 4-603 shall be applicable with respect to enforcement of subpoenas issued under this section, and with respect to witness fees.

- 1020.8 Any person upon whom a subpoena has been served may, within ten (10) days after service, but in any event prior to the return date thereof, file with the examiner assigned to the proceeding a motion to quash or to modify the subpoena and such filing shall stay the subpoena pending final action by the examiner on the motion.
- 1020.9 The examiner assigned to the proceeding, or, in the event that an examiner has not been assigned to a proceeding or is not available, the Chief Examiner, shall rule on the motion promptly.

## **1021 DEPOSITIONS**

- 1021.1 Any party desiring to take the deposition of a witness shall make application therefor in the form of a petition to the examiner assigned to the proceeding or, in the event that the examiner has not been assigned, to the Chief Examiner, setting forth the reasons why the deposition should be taken, the name and residence of the witness, the time and place proposed for taking the deposition, and a general description of the matters concerning which the witness will be asked to testify.
- 1021.2 If good cause be shown, the examiner may, in his or her discretion, issue an order authorizing the deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, and the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied.
- 1021.3 The order shall be served upon all parties, by the person proposing to take the deposition, a reasonable time in advance of the time fixed for taking testimony.
- 1021.4 Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them.
- 1021.5 Each question propounded shall be recorded and the answers shall be taken down in the words of the witness.
- 1021.6 Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate.

- 1021.7 Objections to questions or evidence shall be noted, by the officer, upon the deposition, but he shall have power to decide on the competency or materiality or relevance of evidence, and he shall record the evidence subject to objection.
- 1021.8 Objections to questions or evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.
- 1021.9 The testimony shall be reduced to writing by the officer, or under his or her discretion, after which the deposition shall be subscribed to by the witness unless the parties by stipulation waive the signing or the witness is ill, cannot be found or refuses to sign, and certified in usual form by the officer.
- 1021.10 If the deposition is not subscribed to by the witness, the officer shall state on record this fact and the reason therefor.
- 1021.11 The original deposition and exhibits shall be forwarded to the Hearing Division and shall be filed in the proceedings.
- 1021.12 All depositions shall conform to the specifications of §§ 1010, through 1012.
- 1021.13 Any fees of a witness, the stenographer or reporter, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.
- 1021.14 The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding.
- 1021.15 Only that part or the whole of a deposition, which is received in evidence at a hearing, shall constitute a part of the record in the proceeding upon which a decision is based.

## **1022 INTERROGATORIES**

- 1022.1 Depositions may be taken and submitted on written interrogatories in substantially the same manner as oral depositions and shall be permitted under similar circumstances by the examiner. Two (2) copies shall be served on each party.
- 1022.2 Within seven (7) days after service any party may file with the examiner his or her objections, if any, to the interrogatories and may file such cross-interrogatories as he or she desires to submit.
- 1022.3 Cross-interrogatories shall be served in the same manner on each party as are interrogatories. Two (2) copies together with a copy of any objections to

interrogatories shall be served on each party who shall have five (5) days thereafter to file and serve his objections.

- 1022.4 Objections to interrogatories or cross-interrogatories shall be decided by the examiner.
- 1022.5 Objections to interrogatories or cross-interrogatories shall be made before the order for taking the deposition issues, and if not so made shall be deemed waived.
- 1022.6 The provisions of §§ 1021.9 through 1021.11 shall be applicable to written interrogatories.
- 1022.7 Interrogatories shall conform to the specifications of §§ 1010 through 1012.
- 1022.8 The fact that interrogatories are filed in a proceeding as provided in this section does not constitute a determination that they are admissible in evidence or that they may be used in the proceeding.
- 1022.9 Only those parts or the whole of interrogatories received in evidence at a hearing shall constitute a part of the record in the proceeding upon which a decision is based.

### **1023 PRE-HEARING CONFERENCE**

- 1023.1 Prior to any hearing, the examiner to whom the proceeding has been assigned may give notice of a pre-hearing conference to all parties to the proceeding and to other persons who appear to have an interest in the proceeding.
- 1023.2 The purpose of a pre-hearing conference is to define and simplify the issues and the scope of the proceeding; to secure statements of the positions of the parties with respect thereto and amendments to the pleadings in conformity therewith; to schedule the exchange of exhibits before the date set for hearing; and to arrive at agreements that will aid in the conduct and disposition of the proceeding.
- 1023.3 Pre-hearing conference agreements may include, but are not limited to, the following matters:
  - (a) Matters the examiner can consider without necessity of proof;
  - (b) Admissions of fact and of the genuineness of documents;
  - (c) Requests for documents;

- (d) Admissibility of evidence;
- (e) Limitation of the number of witnesses;
- (f) Reduction of oral testimony to written form;
- (g) Procedures to be followed at the hearing; and
- (h) Disposition of all pending motions.

1023.4 The examiner may require further conference, or responsive pleadings, or both.

1023.5 If a party refuses to produce documents requested by another party at the conference, the examiner may compel the production of the documents prior to hearing by subpoena issued in accordance with § 1020, as though at a hearing.

1023.6 The examiner shall issue a report of pre-hearing conference, defining the issues, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to the report.

1023.7 The report shall be served upon all parties to the proceeding and any person who appeared at the conference.

1023.8 Objections to the report may be filed by any interested person within the time specified in the report.

1023.9 The examiner may revise his or her report in the light of the objections presented. Any revised report shall be served upon the same persons and parties as was the original report.

1023.10 The report (or revised report) shall constitute the official account of the conference and shall control the subsequent course of the proceeding; Provided, that it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

## **1024 FORMAL INTERVENTION**

1024.1 Any person may move to intervene in a proceeding and may become a party thereto if the examiner finds that the party may be bound by the order to be entered in the proceeding or that the party has an interest that may not be adequately represented by existing parties; Provided, that the intervention would not unduly broaden the issues or delay the proceedings.

1024.2 Except for good cause shown, no motion for leave to intervene shall be entertained if filed less than ten (10) days prior to a hearing.

1024.3 A motion to intervene shall set forth facts tending to show the following matters, and in passing upon a motion to intervene, the examiner shall consider, among other things, the following factors:

- (a) The nature of the person's right under any statute to be made a party to the proceeding;
- (b) The nature and extent of the interest of the person;
- (c) The effect of the order which may be entered in the proceeding on the person's interest;
- (d) The extent to which the person's interest will be represented by existing parties;
- (e) The extent to which the person's participation may reasonably be expected to assist in the development of a sound record; and
- (f) The extent to which participation of such person will broaden the issue or delay the proceeding.

1024.4 Any party to a proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in § 1024.3, within ten (10) days after the motion is filed.

1024.5 The decision by the examiner granting, denying, or otherwise ruling on any motion to intervene may be issued without receiving any testimony or oral argument either from the moving party or other parties to the proceeding.

1024.6 Notice of the decision of the examiner shall be in the form of an order which shall contain a statement of facts and the reasons for the order, and shall be served on the moving party and any other party who has filed objections to the motion.

1024.7 A party to whom a motion to intervene has been granted becomes a party to the proceeding; Provided, that intervention allowed by this section is for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by the Department that the intervening party has such a substantial interest in the order that the party will be entered in the proceeding in such manner as will entitle the party to judicial review of the order.

## **1025 APPEARANCES**

1025.1 Any party to a proceeding may appear and be heard in person or through an attorney.

- 1025.2 No register of persons who may practice before the Department is maintained and no application for admission to practice is required.
- 1025.3 Any attorney practicing before the Department may, upon hearing and good cause shown, be suspended or barred from so practicing.
- 1025.4 Any party appearing in person in any proceeding governed by this chapter, whether in response to a subpoena or by request or permission of the Department, may be accompanied, represented, and advised by counsel and may be examined by his or her own counsel before and after other questioning.
- 1025.5 An attorney appearing as counsel shall enter a written appearance on a form provided by the Department which shall contain the signature, address, telephone number, person he or she represents, and a certification that he or she has been admitted to and is authorized to practice before the District of Columbia Court of Appeals.
- 1025.6 If an attorney is admitted only in another jurisdiction, the examiner may allow appearance by counsel upon satisfactory proof that such counsel is admitted to and is in good standing with the highest court of that jurisdiction at the time of the hearing.
- 1025.7 A respondent may be assisted by a non-attorney at the discretion of the hearing examiner.
- 1025.8 A non-attorney designated agent may appear in place of a respondent at the discretion of the hearing examiner.
- 1025.9 A respondent shall submit a notarized affidavit, provided by the Director, that the respondent authorized the non-attorney designated agent to appear in his or her place. The sworn affidavit shall be valid for one (1) year or for a lesser period if stated on the affidavit.

## **1026 WAIVER OF RIGHT TO APPEAR**

- 1026.1 If all parties waive their right to appear before the examiner and present evidence personally or by representative, it shall not be necessary for the examiner to give notice of and conduct an oral hearing.
- 1026.2 A waiver of the right to appear shall be made in writing and filed with the examiner.
- 1026.3 The waiver may be withdrawn by a party at any time prior to the mailing of the notice of decision in the case.

- 1026.4 If the examiner believes that the personal appearance and testimony of the party or parties would assist him or her to ascertain the facts in issue in any proceeding, he or she may give notice of a time and place and conduct a hearing notwithstanding the filing of a written waiver as described in this section.
- 1026.5 If a hearing is called and a party waiving oral hearing fails to appear before the examiner personally or by representative, the examiner shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the proceeding, and shall consider such documents as all of the evidence in the proceeding and the decision shall be based on such documents as are made part of the record.

## **1027 STANDARDS OF CONDUCT FOR REPRESENTATIVES**

1027.1 No representative appearing at a hearing pursuant to § 1025 shall do any of the following:

- (a) Engage in behavior that disrupts the hearing.
- (b) Refuse to obey the instructions of a hearing examiner as to procedure.
- (c) Engage in actions or verbal conduct that show disrespect for the hearing examiner.
- (d) Encourage or induce a respondent or witness to make a statement or offer evidence, that the representative knows or reasonably should have known is false, fraudulent or misleading.

1027.2 No person who entered an appearance or was named in an affidavit required by § 1025.9 within the previous one (1) year period may offer any Department employee any gift, gratuity or thing of value.

1027.3 No non-attorney representative may represent to a current or prospective client that they are an attorney at law.

1027.4 No person offering advice or representation with respect to an adjudication may solicit potential clients in a building, or on the sidewalks adjacent to such a building, in which the Department offers hearings.

1027.5 For the purposes of 1027.4, soliciting shall include offering any information to a respondent that identifies the person's services.

1027.6 No representative shall accept payment for their services inside a building occupied by the Department.



- 1027.7 Any person who violates any provision of this section may be barred from representing a respondent for a period to be determined by the Chief Hearing Examiner, based upon the extent of the violation(s) and whether the person was previously barred.
- 1027.8 Prior to taking the action in § 1027.7, the Chief Hearing Examiner shall send a notice, by regular mail to the person's business address or, if none can be determined, to the person's home address.
- 1027.9 The notice in § 1027.8 shall state the grounds for the action, the proposed duration of the bar, and inform the person of his or her right to a hearing.
- 1027.10 The hearing on the proposed bar shall be conducted by the Director or his or her designee.
- 1027.11 Following the hearing, the Director or his or designee shall issue an order, which shall be sent by regular mail to the address in § 1027.8.
- 1027.12 No decision or order of the Chief Hearing Examiner or the Director or his or her designee under this section may be appealed to the Traffic Adjudication Appeals Board.

**1028-1029. [RESERVED]**

**1030 CONDUCT OF HEARINGS**

- 1030.1 Hearings shall be open to the parties and to such other persons as the examiner considers necessary or proper.
- 1030.2 If the examiner believes that there is relevant and material evidence available which has not been presented at the hearing, the examiner may adjourn the hearing, or, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence.
- 1030.3 The order in which evidence and allegations shall be presented and the procedure at the hearing generally, except as otherwise provided in this chapter shall be in the discretion of the examiner and of such nature as to afford the parties a reasonable opportunity for fair hearing and comport with the burden of proof.
- 1030.4 Unless required for the disposition of ex parte matters authorized by law, examiners assigned to any proceedings under this chapter to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of

fact, with any person or party, nor, in connection with any issue of law, with any party or his or her attorney except upon notice and opportunity for all parties to participate.

- 1030.5 An examiner may communicate with members of the Department and may have the aid and advice of one or more of his or her assistants, but such communications, aid, and advice shall be noted on the record.

### **1031 WITNESSES**

- 1031.1 Witnesses at a hearing shall testify under oath or affirmation.
- 1031.2 The examiner may examine the witnesses and shall allow the parties or their representatives to do so.
- 1031.3 If the examiner conducts the examination of a witness, he or she may allow the parties to suggest matters as to which they desire the witness to be questioned, and the examiner shall do so if such matters are relevant and material to any issue pending for decision before him or her.

### **1032 EVIDENCE: GENERAL PROVISIONS**

- 1032.1 Evidence presented at a hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or other documents filed in the case, subject to later modifications of the issues which may be necessary to prevent injustice.
- 1032.2 Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- 1032.3 The rules of evidence applied in the hearing or review shall include exclusion of evidence whether hearsay or otherwise which does not contain facts of probative value or is not relevant to the issues to be decided.
- 1032.4 No permit shall be suspended or revoked solely on the basis of hearsay evidence.
- 1032.5 Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon.
- 1032.6 Exceptions to the rulings of the examiner made during the course of a hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the examiner is made or sought do the following:
- (a) Makes known the action he or she desires the examiner to take; or

- (b) Makes known his or her objection to an action taken, and the grounds for his or her objection.
- 1032.7 Any offer of proof made in connection with an objection taken to any ruling of the examiner rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which a party or his or her counsel contends would be adduced by such testimony.
- 1032.8 If the excluded evidence consists of evidence in documentary or written form or of references to documents or records, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.
- 1032.9 The examiner may exclude testimony under the rules of privilege recognized by decisions of the courts of the District of Columbia or as provided by law including, but not limited to, communications between attorney and client, physician and patient, and records and files of any official or agency of government which, by statute or otherwise, are recognized as confidential.
- 1032.10 No greater exclusionary effect shall be given any such rule or privilege than would apply in any action in a court of the District of Columbia.
- 1032.11 In a hearing on the suspension or revocation of a license, registration certificate, or reciprocity sticker pursuant to § 1006 or the No-Fault Insurance Act, the examiner may exclude all evidence that is not related to the following questions of facts:
  - (a) Whether a motor vehicle insurance policy has been issued to the person and had been in effect on the day the order of revocation or suspension was issued;
  - (b) Whether a person falsely certified to the Director that a motor vehicle insurance policy was in effect;
  - (c) Whether the person provided the Director with false or inaccurate information; and
  - (d) Whether any time had lapsed or occurred when the person did not possess a motor vehicle insurance policy while the person had a registration certificate or reciprocity sticker.

### **1033 EXHIBITS AND OTHER DOCUMENTARY EVIDENCE**

- 1033.1 When written exhibits are offered in evidence, one (1) copy shall be furnished to each of the parties at the hearing unless the parties have been furnished previously with copies or the examiner directs otherwise.
- 1033.2 If the examiner has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practical time, preferably before the hearing or, at the latest, at the commencement of the hearing.

- 1033.3 In his or her discretion, the examiner may permit a party to withdraw original documents offered in evidence and substitute true copies.
- 1033.4 Documentary evidence may be received in the form of copies or excerpts if the original is not available.
- 1033.5 Upon request, parties shall be given an opportunity to compare the copy with the original when available.
- 1033.6 When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as is practicable.
- 1033.7 If the examiner so directs, the relevant or material matter may be read into the record, or, if the examiner so directs, a true copy of such matter, in proper form, shall be received as an exhibit, and like copies shall be delivered by the party offering the same to opposing parties or to their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof.
- 1033.8 In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless one of the following occurs:
- (a) The party offering the same agrees unconditionally to supply the copies later, or when required by the examiner;
  - (b) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference; or
  - (c) The examiner directs the incorporation by reference or waives the above requirement with the consent of the parties.
- 1033.9 No document or other writing shall be accepted for the record after the close of the hearing, except in accordance with an agreement of the parties and the consent of the examiner

**1034 PROOF OF OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR**

- 1034.1 The standards of competent proof, based upon a chemical test, set forth in this section shall be used to determine the condition of an operator of a motor vehicle with respect to the effect of blood alcohol content of the operator at the time of the operation of a motor vehicle within the District of Columbia.

1034.2 If the operator's blood contained less than five one-hundredths of one percent (.05%), by weight, of alcohol; or the operator's urine contained less than six and one-hundredths of one percent (.06%), by weight, of alcohol, or that at the time of the test less than twenty-four and one hundredths micrograms (.24 mm.) of alcohol were contained in one (1) milliliter of his or her breath, consisting of substantially alveolar air, it shall not establish a presumption that the operator at that time was or was not under the influence of intoxicating liquor, but this fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

1034.3 If the operator's blood contained more than five and one-hundredths of one percent (.05%), by weight, of alcohol, or the operator's urine contained six and one-hundredths of one percent (.06%) or more, by weight, of alcohol, or that at the time of the test twenty-four and one hundredths micrograms (.24 mm.) or more of alcohol were contained in one (1) milliliter of his or her breath, consisting of substantially alveolar air, it shall be deemed prima facie proof that the operator at the time was under the influence of intoxicating liquor.

1034.4 [REPEALED] D.C. Law 4-145, 29 DCR 3138, 3149 (July 23, 1982)

### **1035 EVIDENCE: PHOTO RADAR DEVICE**

1035.1 A photo radar device, as that term is used in this section, is a type of automated traffic enforcement system authorized by the § 901 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1996 (D.C. Law 11-198; D.C. Code § 40-751 et seq.).

1035.2 A photo radar device shall be deemed to be calibrated correctly and in proper working order if:

(a) For a mobile device, there is a Unit Deployment Log corresponding to the time period, date and location of the alleged violation being adjudicated that:

(1) Indicates that the electronic radar tuning fork reading was 36, 37 or 38 and that the radar test sequence displayed the figure "288 8888" at the beginning and the end of deployment; and

(2) Contains a certification by the operator that the device was correctly set up and deployed when the alleged violation was recorded; or

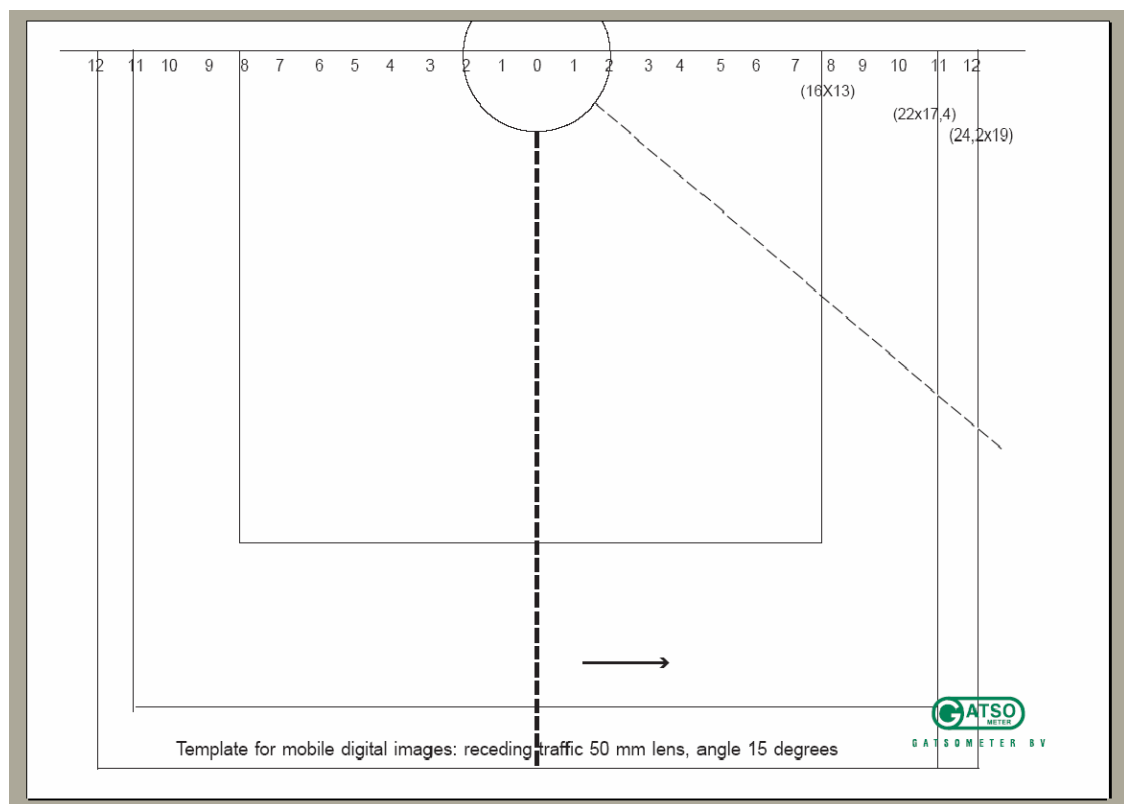
(b) For a fixed photo radar device, there are Fixed Site Logs for the device dated not more than four (4) days before and four (4) days after the date of the alleged violation that:

- (1) Indicate that the electronic radar tuning fork reading was 36, 37, or 38 and that the radar test sequence displayed the figure “288 8888”; and
- (2) Contain certifications by a technician or police officer, or both, that the device was correctly set up.

1035.3 The presence of the letter R or T on the left of the data box on the face of a notice of infraction indicates that the photo radar device was only recording the speed of the vehicle or vehicles shown receding in the image on the notice of infraction.

1035.4 (REPEALED)

1035.5 A vehicle traveling in the direction being tested and whose image is entirely or partially within the two diagonal lines of a cone shown on an official overlay transparency, when the hearing examiner places that transparency over a photo of the violation provided by the Metropolitan Police Department, is the vehicle whose speed was detected by the photo radar device. The dimensions of the cone and the overlay transparency are depicted below.



History of Regulations since Last Compilation by Agency (April 1995)  
Chapter 10 (Procedures for Administrative Hearings) Secs. 1006,  
Hearing on Revocation and Suspension and 1035, Official Notice, 48  
DCR 7314 and 7316 (8-10-01) (DMV)

- 1035.6 An owner who answers a notice of infraction by submitting an affidavit furnishing the name, address, and driver's license number of the person claimed to have had custody, care, or control of the vehicle at the time of the infraction shall be deemed to have waived all other available defenses.
- 1035.7 An owner who answers a notice of infraction as described in § 1035.6 shall remain liable for the infraction if the director or a hearing examiner determines that any or all of the information furnished is inaccurate.
- 1035.8 For the purposes of § 1035.7, any notice sent to the address provided in the affidavit and returned as undeliverable shall establish that the owner submitted inaccurate information.
- 1035.9 For the purposes of § 1035.7, any driver's license number submitted that, based on the records of the Department of Motor Vehicles or information in the Washington Area Law Enforcement system, does not match the name provided shall establish that the owner submitted inaccurate information.
- 1035.10 A respondent determined to have submitted inaccurate information in the affidavit described in § 1035.6 shall receive written notice of the determination and be afforded an opportunity for a hearing to contest the determination of the Department that the information submitted was incorrect.
- 1035.11 Any person seeking a hearing under § 1035.10 must appear at the Department within sixty (60) days of receipt of the notice of determination.
- 1035.12 Failure to appear within the time period provided by § 1035.11 shall result in a default judgment being entered against the respondent in accordance with § 206(b) of the Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2302.06(b)).
- 1035.13 Nothing in this section shall preclude the Department from requesting that the respondent be criminally prosecuted for perjury.

**1036 OFFICIAL NOTICE**

- 1036.1 Without limiting in any manner or to any extent the discretionary powers of the examiner to notice other matters or documents which are properly the subject of official notice, the following facts are officially noticed in all proceedings under the provisions of this chapter:

- (a) Matters which the courts of the District of Columbia find judicially cognizable;
  - (b) Matters of generally recognized technical or specialized facts within the knowledge and experience of the examiners of the Department; and
  - (c) Facts contained in the records and files of the Department.
- 1036.2 Any fact contained in a document belonging to a category enumerated in § 1036.1 shall be considered to have been physically incorporated into and made part of the record in any proceeding.
- 1036.3 All parties to a proceeding shall be notified either before or during the hearing, or by reference in preliminary conferences, reports or otherwise, of the material noticed, including any Departmental memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.
- 1036.4 Where the decision of the examiner rests on official notice of a material fact not appearing in the evidence in the record, any party shall, upon filing a motion within ten (10) days after notice thereof, be afforded a reasonable opportunity to offer evidence to the contrary.
- 1036.5 When a motion to offer evidence is filed, under § 1036.4, the examiner's decision is suspended, and, if the party's permit was suspended or revoked by the decision, he shall be issued, upon request, a temporary permit pursuant to § 1005.

## **1037 OBJECTIONS TO PUBLIC DISCLOSURE OF INFORMATION**

- 1037.1 Any person who objects to public disclosure of any information contained in any paper filed in any proceeding, shall segregate, or request the segregation of, such information into a separate paper and shall file it, or request that it be filed, with the examiner separately in a sealed envelope bearing the caption of the enclosed paper and the notation "CLASSIFIED OR CONFIDENTIAL UNDER § 1037."
- 1037.2 Notwithstanding any other provision of this section, copies of the filed paper need not be served upon any other party unless so ordered by the examiner.
- 1037.3 Any person who objects to public disclosure of any information sought to be elicited from a witness or himself or herself on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection, and after all present have been sworn to secrecy, the witness shall be compelled to disclose such information only in the presence of the examiner and the attorneys for the parties.



- 1037.4 The transcript of such information shall be segregated and filed in a sealed envelope in the manner prescribed in this section.
- 1037.5 Copies of the segregated portion of the transcript need not be served upon any other party unless ordered by the examiner.
- 1037.6 In case of objection to public disclosure of any information filed by or elicited from any government department or representative thereof, the department or representative making the objection shall be accorded the procedures described in this section.
- 1037.7 No information covered by this section need be withheld from public disclosure unless written objection is filed with the examiner prior to the time of hearing; Provided, that such motion need not be filed in the case of objection made by a government department or representative.
- 1037.8 The objection shall be in the form of a motion and signed by the objecting party, duly authorized officer or agent thereof, or by counsel representing that party.
- 1037.9 The motion shall describe the information sought to be withheld and shall contain a statement of the reasons it is claimed that public disclosure would adversely affect the interests of the objecting party and is not required in the interest of the public.
- 1037.10 Notwithstanding any of the provisions of this section, whenever the objection to disclosure of information shall have been made in the first instance at the time of hearing, the written motion required by this section shall not be necessary, but may be submitted if the parties so desire or if the examiner so directs.
- 1037.11 The examiner shall rule on motions filed pursuant to this section specifying the extent to which, and the conditions upon which, the information may be disclosed to the parties, which order shall be effective upon the date stated therein or, if made at a hearing, immediately upon the ruling of the examiner.

## **1038 ARGUMENT BEFORE THE EXAMINER**

- 1038.1 The examiner shall give the parties to the proceeding adequate opportunity during the course of a hearing for the presentation of arguments in support of or in opposition to motions, objections, and exceptions to rulings of the examiner.
- 1038.2 When, after the evidence in a proceeding has been received, in the opinion of the examiner, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either on his or her own motion or at the request of a party, permit the presentation of oral arguments.

- 1038.3 The examiner may impose such time limits on the arguments as he or she may determine, having regard for his or her other hearing assignments.
- 1038.4 Oral argument shall be transcribed and will be available as part of the record.
- 1038.5 The decision of the examiner on whether oral argument is allowed shall be final.

## **1039 TRANSCRIPTS**

- 1039.1 Hearings shall be recorded or reported and shall be available for transcribing upon request of any party.
- 1039.2 Costs for transcripts of the record or of any portion shall be borne by the parties requesting the transcripts.
- 1039.3 Changes in the official transcript may be made only when they involve errors affecting substance.
- 1039.4 A motion to correct a transcript shall be filed with the Hearing Division within ten (10) days after receipt of same by a party.
- 1039.5 If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the Examiner, be changed to reflect the corrections.
- 1039.6 If objections are received, the motion and objections shall be submitted to the reporter or person who transcribed the recording by the Examiner together with a request for a comparison of the transcript with the stenographic or other record of the hearing.
- 1039.7 After receipt of the report of the reporter or person who made the transcription, an order shall be entered by the Examiner settling the record and ruling on the motion.

## **1040 PRESENCE OF ISSUER AT PARKING TICKET HEARING**

- 1040.1 The issuer of any parking ticket shall appear at a scheduled hearing for that ticket if requested by the respondent at the time the respondent denies the notice of infraction; provided, that the denial was received by the Department within sixty (60) calendar days of the issuance of the notice of the infraction, as provided in sections 304 or 305 of The Traffic Adjudication Act, effective September 2, 1978 (D.C. Law 2-104; D.C. Official Code §§ 50-2303.04 or 50-2303.05) (2001).

1040.2 If the issuer fails to appear when required pursuant to § 1040.1, the hearing examiner may:

- (a) Continue the hearing; or
- (b) Proceed with the hearing without the presence of the issuer.

1040.3 After a hearing conducted under circumstances provided by § 1040.2(b), the ticket shall be dismissed if the hearing examiner determines that the testimony of the issuer is necessary to determining liability.

#### **1041 DECISIONS OF HEARING OFFICERS**

1041.1 The examiner may announce his or her decision orally at the close of the hearing or he or she may decide not to announce it until rendering his decision in writing at a later date.

1041.2 Regardless of whether or not the decision is announced orally, a copy of the decision shall be given to each party or to his or her attorney of record.

1041.3 The decision shall include a statement of findings of fact and conclusions of law.

1041.4 The findings shall incorporate basic facts upon which conclusions are based. Mere conclusory assertions or summaries of evidence shall not be sufficient for use as a basis for findings of fact within the meaning of this section.

1041.5 No decision shall be made by an examiner except upon consideration of the entire record of the proceeding, or upon such portion of the record of the proceeding as may be agreed upon by all the parties to the proceeding, and no evidence, information, or other knowledge (other than official notice of a material fact not appearing in the evidence in the record but taken cognizance of in accordance with § 1036) brought to the attention of the examiner shall be considered.

1041.6 In any proceeding in which evidence is taken, the record shall include, wherever applicable, all of the following:

- (a) Pleadings, motions, and rulings thereon, including objections or exceptions and the reasons for making such rulings;
- (b) All evidence received of whatever kind, including records and documents in the possession of the Department of which the examiner made use or took official cognizance;

- (c) A statement of matters officially noticed, and any contest thereof by any party including any rulings thereon by the examiner;
- (d) Offers of proof, objections thereto, and the rulings by the examiner thereon and. any statements made by a party as to what excluded evidence would have shown;
- (e) Arguments of the parties or of counsel;
- (f) The examiner's findings of fact and conclusions of law; and
- (g) All staff memoranda, reports, or other data submitted to the examiner, referred to by him or her, or requested by him from other Departmental personnel.

## **1042 REHEARING OR RECONSIDERATION**

- 1042.1 A decision in an individual proceeding involving the suspension or revocation of a license or privilege to drive shall be subject to rehearing or reconsideration by the examiner within ten (10) days from the date of its entry upon motion by a party or on motion of the examiner.
- 1042.2 The grounds for rehearing or reconsideration shall be one or more of the following:
  - (a) Newly discovered or newly available evidence relevant to the issues;
  - (b) Need for additional evidence to develop adequately the facts essential to proper decision;
  - (c) Probable error committed by the examiner in the proceeding or in its decision which would be grounds for reversal on judicial review of the decision;
  - (d) Need for further consideration of the issues and the evidence in the public interest; and
  - (e) A showing that issues not previously considered ought to be examined in order properly to dispose of the matter.
- 1042.3 The order of the examiner granting rehearing or reconsideration or the motion of the party therefore, shall set forth the grounds which justify that action.
- 1042.4 Nothing in this section shall prevent rehearing or reconsideration of a matter by any examiner in accordance with other statutory provisions applicable to the

Department, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious testimony.

- 1042.5 On rehearing or reconsideration, the matter may be heard by the examiner who heard the proceeding initially or it may be referred to another examiner should the circumstances justify such referral in the opinion of the Chief Examiner.
- 1042.6 The hearing shall be confined to those grounds upon which the rehearing or reconsideration was ordered.
- 1042.7 If an application for rehearing is timely filed, the period within which judicial review must be brought under the D.C. Administrative Procedure Act shall run from the final disposition of the application.
- 1042.8 A motion for rehearing or reconsideration shall not operate as a stay of any order of suspension or revocation of a license or registration which has become final by decision of the examiner following the original hearing.

#### **1043 PETITION FOR REVIEW BY APPEALS BOARD**

- 1043.1 Any person aggrieved by the decision of an examiner may petition within fifteen (15) days from the date of the ruling for a review by an Appeals Board.
- 1043.2 Petitions for review shall comply with the requirements of petitions generally as provided in this chapter, and shall set out the requests for review.
- 1043.3 The provisions of § 1005 with respect to the issuance of a temporary license as a stay of an order of suspension or revocation shall apply in any case pending final action on review.
- 1043.4 The provisions of [approximately] 1042 and 1043 shall not apply to reviews of orders or acts of the Director or his or her agent under the provisions of the Act of May 25, 1954 (D.C. Code 40-420 (1981)).
- 1043.5 Reviewing authority in cases involving suspension or revocation of operators' permits under the provisions of the Act of March 3, 1925 (D.C. Code § 40-403(a) (1981)) is delegated to the Director.

#### **1044 APPEALS BOARD REVIEW OF DECISIONS**

- 1044.1 An Appeals Board shall review decisions of examiners as provided in Title IV of the Traffic Adjudication Act.
- 1044.2 No person on the Appeals Board shall review any of his or her own orders or acts.

- 1044.3 In considering issues raised on review by the party or parties which relate to findings of fact or conclusions of law in the order or decision of the examiner, the Appeals Board will consider only the following issues:
- (a) Whether a finding of a material fact is erroneous;
  - (b) Whether a substantial and important question of law, policy, or discretion has been erroneously interpreted or applied;
  - (c) Whether prejudicial error has occurred; and
  - (d) Whether a prejudicial abuse, misuse, or failure to use discretion has occurred.
- 1044.4 If the Appeals Board determines that the examiner erred in any respect or that his or her order or decision should be changed, the Board may make any necessary findings or order in lieu thereof, or remand the case for further hearing.
- 1044.5 The Appeals Board may modify, set aside the order or decision, in whole or in part, or take any other action authorized in this title.
- 1044.6 As soon as practical after the issues on review have been considered, the Appeals Board shall prepare a final order which shall set forth the action of the Board and its reasons therefor.
- 1044.7 A copy of the order shall be given to each party or his or her attorney of record.